



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of James Hartnett,
Pennsauken

CSC Docket No. 2022-65

Reconsideration

ISSUED: SEPTEMBER 7, 2021 (SLK)

James Hartnett, a former Police Captain with Pennsauken, represented by Katherine D. Hartman, Esq., requests reconsideration of *In the Matter of James Hartnett* (CSC, decided June 30, 2021) which denied his petition for interim relief of his separation from employment, effective April 30, 2021.

By way of background, Harnett emailed the Police Chief on April 14, 2021, indicating that he intended to retire as of May 1, 2021. In addition to other actions which are described in the prior decision, he subsequently informed the Police Chief that he was cancelling his application for retirement. However, on April 26, 2021, the Public Safety Director informed Harnett that Pennsauken was denying his request to rescind his resignation and his resignation was to be effective April 30, 2021. Thereafter, the Civil Service Commission (Commission) denied Hartnett's request for interim relief as although Hartnett did not specifically use the word resignation in his request, the Commission found that Hartnett's actions were considered a resignation, and under *N.J.A.C. 4A:2-6.1(c)*, Pennsauken was not required to accept his request to rescind his resignation.

In his request, Hartnett believes that the Commission did not consider his June 22, 2021, reply brief and the cases therein in making its decision and, therefore, made a clear material error in its decision. He argues that Pennsauken has manipulated the Civil Service process by attempting to substitute a notice of the filing

of a retirement application with a resignation. Harnett presents that Pennsauken relies on *N.J.A.C.* 4A:2-6.1, resignation in good standing. However, he asserts that retirements are governed under the Police and Firemen's Retirement System (PFRS). See *N.J.A.C.* 17:4-6. Under PFRS, retirement is defined as termination of the member's active service with the retirement allowance granted and paid under the provisions of this Act. See *N.J.S.A.* 43:16A-1(16). Further, a member has the right to withdraw or cancel the retirement prior to the effective date. See *N.J.A.C.* 17:4-6.3.

Harnett asserts that the courts have held that someone who advised their employer that they intend to retire and then changes their mind, should be immediately reinstated to their position. He presents *In the Matter of North Arlington PBA 95 v. North Arlington*, 221 *N.J. Super.* 520 (1987) where the issue presented to the Court was whether a municipal ordinance that prohibits an officer from changing their mind and prohibiting them to withdraw an application for retirement once they have elected to retire and accepts any benefits, including but not limited to terminal leave, accumulated sick time, vacation time or personal days was preempted by State law. In that matter, the Court ordered that the ordinance was not preempted by State law because it did not impact the police officer's right to file, withdraw or change his application for a PFRS pension.

Harnett states that the Court relied heavily on the unpublished Superior Court, Appellate Division decision of *Marino v. Edison Township*, Docket No. A-5508-8317. In that case, the Mayor advised Marino that once his retirement was approved by the Township and Public Safety Director, it was irrevocable. He was denied the opportunity to rescind his retirement application and the Superior Court denied his request. The Court found that his terminal leave request was rescinded in accordance with the collective bargaining agreement, which was silent as to what would occur if a police officer changed his mind. The Court found that there was no statute or ordinance which prohibits a police officer from changing his mind where retirement was involved and since there was no evidence of bad faith or that the Township detrimentally relied upon Marino's conduct, it concluded that Marino should be returned to employment.

Harnett also presents *Klawitter v. City of Trenton*, 395 *N.J. Super.* 302 (2007), where the employee applied for retirement in the summer of 1998 and the Division of Pensions approved it with a November 1, 1998 effective date. On November 27, 1998, the employee sought reinstatement. The Court stated that under *N.J.A.C.* 17:4-6.3(a) and *N.J.A.C.* 17:4-6.2, the employee was entitled to cancel his retirement within 30 days of his retirement date and before his allowance had become due and payable. The employee had given his retirement notice approximately four months prior to retirement and 30 days after approval sought reinstatement. The Court affirmed that he was entitled to cancel his retirement, but because his former position

was filled, he had to seek reemployment by having his name placed on the reemployment list rather than the promotional list.

Harnett argues that these cases makes it clear that an employee may rescind his retirement months after submitting his application and 27 days after the application being approved. Harnett advised Pennsauken of his intent to retire; however, he withdrew the application within days of the initial filing and well before the May 1, 2021 effective date. His application was never considered by the Pension Board and his position was not filled. In fact, Harnett indicates that the position is still vacant because there are no qualified candidates on a Captain's list who could fill it. Further, Harnett argues that the Commission committed clear material error when it failed to consider the immediate or irreparable harm if his request is not granted as he has been out of work since May 1, 2021, with no salary or benefits for himself, wife, or children. He cannot get another job for fear of being accused of abandoning his position with Pennsauken and he has extreme financial pressure and is unable to provide health care coverage for his dependents. Harnett contends that the Commission also committed clear material error when it failed consider that there would be no harm to Pennsauken. He states that Pennsauken suffers no injury should he be immediately reinstated. Harnett reiterates that he is the only qualified Captain who ran the entire patrol division. The memo by the Police Chief explained the enormous void that would be caused in his absence due to his extensive experience. He notes that the former Police Chief recently retired, and the only other Captain is now Acting Chief, which means there are no Captains in the department nor is there an active Captain's or Lieutenant's list and the Acting Chief recently solicited Sergeants to fill the Captain's position. Harnett asserts that Pennsauken cannot demonstrate in any way how his reinstatement would cause a hardship. Finally, he argues that the Commission committed clear material error when it failed to consider the public's best interest. Harnett reiterates that neither of Pennsauken's two Captain positions are filled as the other Captain is now Acting Chief. Further, there is no Captain's or Lieutenant's list which Pennsauken can use to promote. Therefore, he asserts that any position that will be filled will be in an acting capacity only and the highest ranked officers in Pennsauken will neither be qualified under Civil Service rules nor will they be experienced in how to perform their duties. Harnett emphasizes that he headed the Patrol Division and has 23 years in law enforcement and believes that his knowledge and experience in that position will best service the public interest.

Hartnett re-submits his certification along with other submissions from the initial interim relief request. He certifies that in March and April 2021, he was undergoing enormous stress due to actions of a subordinate. Hartnett indicates that Pennsauken was aware of this and offered him counseling on March 22, 2021, and recommended that he seek professional help. Harnett stated that on April 14, 2021, he impulsively submitted an application to PFRS because he was experiencing

extreme stress. He contends that although he removed some things from his desk on April 14, 2021, he did not remove everything.

Hartnett notes that although he sent an April 14 memorandum with the subject line of retirement that said he would not be returning to work, after taking two vacation days, he did return to work. He presents that he performed his duties until April 19, 2021, and until the Public Safety Director told the Police Chief that he was to collect all of Hartnett's belongings by April 30, 2021. Hartnett certifies that on April 15, 2021, he texted that Administrator asking if he would take a call from him and the purpose of the call was to advise him that he was not going to retire. That same day, a Sergeant informed him that his brother, who was a Pennsauken Committeeman, and the Administrator were shocked that he filed for retirement and did not think it was in his best interest. Harnett states that the Sergeant specifically told him that the Administrator wanted him to send an e-mail requesting a meeting about his decision. He states that he did and advised that it was his intent to cancel his application. Hartnett presents that he e-mailed the Administrator requesting a meeting to discuss his decision and explained that he made it for personal reasons, although he had concerns about the financial impact it would have on his family and be detrimental to the Police Department. Further, on April 17, the Public Safety Director sent the Police Chief a memo regarding the plan of action after Hartnett's "retirement." Additionally, on April 19, the Administrator sent him an e-mail advising that he was aware of his April 14 e-mail of the notice retirement as well as the cancellation of his retirement application.

Harnett states that the Administrator did not indicate that the recession of his retirement application would be a problem. He indicates that he immediately responded stating that he no longer needed the meeting because he was cancelling his retirement application. Harnett acknowledges that he took vacation on April 20 and 21, but states he continued to work at home to complete various tasks through e-mail and phone calls. Thereafter, he returned to work on April 22, 2021, and performed his normal work duties. Harnett notes that on April 23, he received an e-mail from the Public Safety Director regarding the budget which confirms that the Public Safety Director was aware that he was still working without a break in service. Additionally, the Public Safety Director provided him a date for the meeting which had already been cancelled, which Hartnett responded by stating that the meeting had been cancelled, but he received no response. On April 23, 2021, the Sergeant spoke with him stating that "they" were going to be upset with him for cancelling the meeting since "they have questions for you." On April 26, 2021, he received, for the first time, a memorandum from the Public Safety Director that included the word "resignation." The memorandum did not acknowledge the cancellation of his retirement application, but referenced Civil Service resignation regulations.

Hartnett asserts that it is only after he cancelled the meeting with the Administrator did Pennsauken refer to his actions as a resignation. Thereafter, on

April 27, 2021, his counsel advised Pennsauken that its actions were improper as he had not resigned, and he continued to work on April 28 and 29. On April 30, 2021, he received a memorandum stating that he resigned and that April 30, 2021, would be his last day.

In response, Pennsauken, represented by Michael J. DiPiero, Esq., asserts that the Commission properly decided the prior decision and Harnett's request should be denied. It states whether the Commission considered his June 22, 2021 reply, the decision should not be overturned. Pennsauken presents that this agency advised the parties that all submissions should be submitted no later than May 20, 2021, and it filed its brief timely in accordance with that direction. It states that Harnett contends that he delayed his reply because the parties were attempting to settle the matter. Further, even with settlement discussions, Pennsauken complied with the schedule presented by this agency and Harnett's failure to do should not be the basis for finding clear material error or to support an argument that he is presenting new evidence or additional information as both parties had the opportunity to submit additional information by May 20, 2021.

Regardless, even if the Commission did consider Harnett's reply or were to consider it now, the Commission properly applied State law and regulations in determining that Pennsauken had no obligation to accept his request to rescind his resignation. Pennsauken asserts that contrary to Harnett's statements, the courts have not held "that someone who advises their employer that they intend to retire and then changes their mind, should immediately be reinstated to their position" as the cases that he relies upon stand for the exact opposite and support its positions. In *North Arlington, supra*, the Court upheld a municipal ordinance that prevented an officer who elected to retire from changing his mind once he accepted any benefits from the Township, including terminal leave, accumulated sick time, vacation time, or personal days. The Appellate Division held that this ordinance was compatible with the statutory scheme in place regarding the PFRS's ability to rescind a retirement and the Civil Service regulations regarding resignation, where there is no requirement on the employer to permit its employees to rescind their decision to terminate employment. Therefore, North Arlington was not required to reinstate the officer after he changed his mind. Pennsauken states that contrary to Harnett's contention, the Court in *North Arlington* did not rely heavily upon *Marino, supra*. The Court noted that *Marino* was relied on heavily by the trial judge and it distinguished its holding from *Marino*, stating that it was in no way inconsistent with its holding. Additionally, Harnett cites *Klawitter, supra*, in support of his case. However, in that case, the employee was not entitled to immediate reinstatement, but rather had to seek reemployment by having his name placed on the reemployment list.

Pennsauken also states that Harnett's June 22, 2021 reply and the current motion for reconsideration contain new arguments and evidence not set forth in the

original application. Therefore, Pennsauken submits a reply certification from the Township Administrator to respond to the factual allegation contained in Harnett's untimely reply certification. While Pennsauken believes that the Commission properly decided the prior decision, in the event the Commission decides to reconsider its decision, it asserts that the conflicting certifications demonstrated that the facts of this matter are clearly in dispute such that a hearing should be held before any relief is considered.

Additionally, Pennsauken presents that the notion that the Police Department is helpless without Harnett is not reality. It asserts that the Department has not been appreciably impacted by his sudden departure and it is disingenuous for him to argue his concern for the public's interest when he unceremoniously cleared out his office on the same day he told Pennsauken that he was not coming back to work.

The Township Administrator certifies that on December 31, 2020, an anonymous communication was received alleging that Harnett was having an extra-marital affair with an active female Pennsauken Police Officer and alleging that the subordinate Police Officer received preferential treatment for two consecutive assignments, one being a promotion. However, Harnett was not facing any disciplinary charges related to the allegations and continued to work. The Administrator indicates that a meeting with the Public Safety Director and himself was held on March 22, 2021, at Harnett's request, where Harnett appeared with the female officer and they acknowledged the extra-marital affair. The Administrator certifies that Harnett did not appear under duress and employee assistance was offered to Harnett and the female officer. Harnett was not put on notice that he was the target of an investigation or otherwise facing any adverse action due to his admission and he continued in his duties. On April 14, 2021, Harnett contacted the Chief Financial Officer (CFO) to request access to retiree healthcare benefits and he also requested that the CFO not advise the Administrator of his request, but the CFO responded that this request was denied due to municipal protocol and State law. At 11:20 p.m. on April 14, Harnett submitted to the Police Chief his e-mail resignation letter indicating that April 14 was his last day of work, and he was to surrender his police equipment to another Captain. Further, on April 14, Harnett removed the contents and personal effects from his office.

Thereafter, the Administrator presents that after clearing out his desk and turning in his badge and gun, Harnett reported to duty without formal notice to Pennsauken. The Administrator acknowledges that Harnett did send him a text on April 15 asking if the Police Chief would take a call from him, and after the Administrator did not reply, Harnett contacted a Sergeant in attempt to arrange a meeting with a Township Committeeman, who was the Sergeant's brother. The Sergeant indicated that Harnett wanted to know if Pennsauken was willing to allow him to return to work and delay his retirement. Thereafter, a meeting was initially scheduled with Harnett on April 19 and then rescheduled to April 27 at the Public

Safety Director's request. On April 23, 2021, Hartnett advised that the meeting was no longer necessary. The Administrator certifies that Hartnett did not rescind his retirement until April 19 and not within 24 hours as indicated in Hartnett's certification.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

N.J.A.C. 4A:2-1.2(a) provides that upon the filing of an appeal, a party to the appeal may petition the Commission for a stay or other relief pending final decision of the matter.

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;
and
4. The public interest.

N.J.A.C. 4A:2-6.1(a) provides that any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days written or verbal notice, unless the appointing authority consents to a shorter notice. *N.J.A.C.* 4A:2-6.1(b) provides that that resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation. *N.J.A.C.* 4A:2-6.1(c) provides that a request to rescind the resignation prior to its effective date may be consented by the appointing authority. *N.J.A.C.* 4A:2-6.1(d) provides that where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the Commission under *N.J.A.C.* 4A:2-1.1.¹

¹ The Commission notes that in this matter, Hartnett has indicated his feelings of "stress" and its impact on his decision to resign. However, there is no evidence of any actual improper duress or coercion on Pennsauken's part that would implicate *N.J.A.C.* 4A:2-6.1(d).

N.J.A.C. 4A:2-1.1(d) provides, in pertinent part, except where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. For the reasons set forth below, the Commission finds no reason for a hearing in this matter.

Initially, it is noted that the Commission did receive and consider Hartnett's June 22, 2021 submission; however, the Commission found that it did not impact its decision. Further, as indicated in the prior decision, although *N.J.A.C.* 4A:2-6.1. does not expressly address "retirement," this rule provides the appropriate framework for voluntary separation from employment. See *In the Matter of Geraldine Bryant* (MSB, decided January 30, 2008).

In this matter, the material facts are that on April 14, 2021, Hartnett sent an e-mail indicating that his last day of work was going to be April 30, 2021, he was going to take a leave of absence starting April 15, 2021 through April 30, 2021, and he made arrangements to turn in his police equipment to another Captain. Therefore, as indicated in the prior decision, although Hartnett did not specifically use the word "resignation" in his e-mail, under *N.J.A.C.* 4A:2-6.1(a), this was notice of a request to resign in good standing, effective April 30, 2021. Also, as previously indicated, there is no requirement that one use the word "resign" to request to resign. Therefore, upon Pennsauken's receipt of the e-mail, his resignation was accepted under *N.J.A.C.* 4A:2-6.1(b). Thereafter, Harnett's subsequent actions indicated that he requested that his resignation be rescinded and ultimately, as was its right under *N.J.A.C.* 4A:2-6.1(c), Pennsauken declined to accept his request. The fact that Hartnett withdrew his application to retire from PFRS, which is a separate matter not under Civil Service jurisdiction, has no bearing on whether his actions are considered a resignation under Civil Service rule and law.

Regarding *North Arlington, supra*, there was a municipal ordinance which indicated that once a police officer elected to take retirement and accept any benefit that the officer cannot change his mind and seek to return to active duty nor can the officer withdraw his application for retirement. The Court held that this ordinance did not conflict with laws that allow a member the right to withdraw retirement before his allowance becomes due and payable and that the officer did not have the right to return to employment with the North Arlington Police Department. The Court noted that the applicant could withdraw his application for retirement and accept employment with another municipality or government agency. Additionally, the Court highlighted that North Arlington's decision was consistent with Civil Service regulations that provide that a request to rescind the resignation may be consented by the appointing authority and approved by the Commission. Further, the Court specifically noted that Civil Service regulations concerning resignation do not conflict with PFRS regulations. As such, the issue in this matter is not whether Hartnett had the right to withdraw his application for retirement under PFRS law. The issue is whether Hartnett's notice, regardless as how he characterized it or how

certain Pennsauken personnel characterized it, is considered a resignation under Civil Service law and rules. As indicated in its prior decision and again above, the Commission finds that it was. As indicated in *North Arlington*, even though Harnett resigned from Pennsauken, he can still withdraw his application from PFRS and seek employment elsewhere. He just no longer has the right to his prior employment with Pennsauken.

Concerning *Marino, supra*, in that matter, as indicated by the Court in *North Arlington*, there was a collective bargaining agreement that was silent regarding what happened if a police officer changed his mind after informing the township that he planned to retire. The *Marino* Court indicated that since there was no statute or ordinance which prohibits a police officer from changing his mind and there was no evidence that Marino acted in bad faith or the Township detrimentally relied on his representation, it concluded that Marino should be returned to employment. Initially, it is noted that as *Marino* is an unpublished opinion, it does not provide legal precedent that the Commission is required to follow. Regardless, in this matter, there is a Civil Service regulation that provides an appointing authority discretion as to whether it rescinds a resignation. As such, the Commission's decision does not conflict with *Marino*.

Referencing *Klawitter, supra*, the employee requested to withdraw his retirement within 30 days after his effective retirement date and argued that he was wrongfully denied his right to return to his position as Sergeant. The City argued that under Civil Service regulations he was not entitled to immediately return to his former position and, instead, he should have his name placed on a reemployment list. The Court found that although the employee did have the right to cancel his retirement application with PFRS, it agreed with the City that he did not have the right to return to his prior position and he should be placed on the reemployment list governed by Civil Service regulations. As such, the present matter is distinguishable from *Klawitter* as there was no discussion or analysis as to whether the employee's actions were considered a resignation which the City could rescind at its discretion. Further, to the extent that *Klawitter* is relevant, the Court did not order his immediate reinstatement and indicated that it agreed with the City's position that his reinstatement was to be governed by Civil Service regulations. In this matter, as Harnett's actions are considered a resignation in good standing, Civil Service regulations allow for Pennsauken to have discretion as to whether it is going to rescind that resignation.²

Therefore, since Harnett's notice was considered a resignation under Civil Service law and rules, he has not established a clear likelihood of success on the

² Moreover, consistent with *Klawitter*, Harnett would be entitled to request to be placed on a regular reemployment list based on his resignation pursuant to *N.J.A.C. 4A:4-7.10*. However, such placement or reemployment is at the sole discretion of the appointing authority and is generally not otherwise reviewable by the Commission.

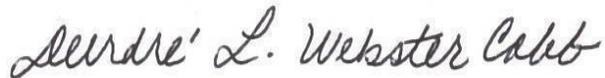
merits. Further, any immediate or irreparable harm to him was caused by his own actions and it is noted that he still has the option to seek employment elsewhere or to re-apply for retirement. Moreover, it is Pennsauken who would be substantially injured if it did not retain the discretion to not rescind a resignation and be forced to employ an employee after that employee resigns. Similarly, it is in the public's best interest to allow Pennsauken to exercise its discretion under Civil Service law and rules to decide whether to rescind a resignation, as it is in the best position to determine the needs and composition of its workforce.

ORDER

Therefore, it is ordered that this petition be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF SEPTEMBER, 2021



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